

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

C. P. No. D-6037 of 2018

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

Petitioner : M/s. Coating Engineers (Pvt.) Limited through its Managing Director, Iqbal Mirza Nazar appearing in person.

Respondent No.1 : Ciba-Geigy (Pakistan) Limited; now Syngenta (Pakistan) Limited.

Respondent No.2 : Ciba-Geigy Corporation of America; now Novartis Corporation.

Respondent No.3 : Ciba-Geigy Limited, Basel, Switzerland; now Novartis AG. Through its Branch Office in Pakistan, Novartis Pharma (Pakistan) Limited through Shah Bakht Pirzada, Advocate.

Date of hearing : 17.08.2022.

ORDER

YOUSUF ALI SAYEED, J. - The captioned Petition has been preferred against the Order dated 11.05.2018 made by the learned XIIth Additional District & Sessions Judge, Karachi, South, dismissing Civil Revision Application No.87/2013 filed by the Petitioner against the judgment and decree dated 30.10.2010 made by the learned Vth Senior Civil Judge, Karachi, South in Civil Suit No.452/2003 (Old Suit No.378/1983), whereby said Suit stood dismissed.

2. A perusal of the impugned Order reflects that the Revisional Court was of the view that the proper course of action that ought to have been followed by the Petitioner was to have filed an Appeal under Section 96 CPC. However, the Petitioner instead filed an Application under Section 152 CPC seeking certain corrections in the judgment and decree and thereafter, belatedly filed the Revision, well after lapse of the period of limitation otherwise prescribed for filing of an Appeal. The operative part of the impugned order reads as follows:-

“Perusal of the record shows that the appellant filed an application under section 152 CPC which was allowed to the extent of error pointed out by the Appellant but the appellant has not proceeded to obtain the correction in the said decree, therefore the decree remained the same which was passed on 30.10.2010.

It is on record that the impugned decree was passed on 30.10.2010 and certified was applied on 18.07.2013 and same was delivered on 20.07.2013, however instant Revision was filed on 31.08.2013 with the delay of more than 2 years. It is the duty of the party seeking condonation of delay for filing time barred appeal with explanation of each delayed day. In the instant case neither the application for condonation of delay has been filed by the appellant nor the same has been urged during the arguments.

Record shows that the appellant in place of Civil Appeal under order 96 CPC has preferred instant Civil Revision against the impugned judgment and decree. There is no cavil to the proposition that the Revision can be converted into Appeal and Appeal into Revision vice versa subject to limitation. Record indicates the instant revision has been filed after lapse of more than 2 years, therefore, even if the instant Civil Revision application is converted and treated as Civil Appeal it is barred by limitation.

For the forgoing reasons made herein above, the instant revision application is hopelessly barred by limitation and stand dismissed.”

3. The Representative/Managing Director of the Petitioner appearing in person could not satisfy us as to how a Revision would lie or even explain the delay in the institution of that proceeding. Instead he sought to repeatedly invite attention to the Application that had been preferred by the Petitioner under Section 152 CPC and argued at considerable length that the effect of the correction was such as to establish the underlying claim of the Petitioner against the private Respondents.

4. We have examined the Order dated 12.07.2018 made on the Application by the learned Vth Senior Civil Judge, Karachi, South, which reflects that the only correction made was that in a particular paragraph the sentence “It is also admitted that these claims mentioned in annexure XXI have been paid by the defendants to the plaintiff”, was corrected to read as “it is correct to suggest that the three claims mentioned in Annexure XXI have been paid by the defendants to the plaintiff”.

5. We fail to see how such a correction advances the cause of the Petitioner, as the Suit remained dismissed and the correction did not serve to bolster the case on merits in any way.

6. Under such circumstances, no case for interference in exercise of the Constitutional jurisdiction of this Court stands made out. As such, the Petition stands dismissed with cost of Rs.50,000/- to be borne by the Petitioner within 30 days from the date of this Order. In the event of the failure/inability of the Petitioner to pay the same, the sum would be recoverable from the Representative/Managing Director of the Petitioner personally.

JUDGE

CHIEF JUSTICE

Karachi.
Dated: